

Message Text

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SUBJECT: AMERICAN COMPANY FACES LARGE LOSSES IN MEXICO

BEGIN SUMMARY. THIS TELEGRAM CONTAINS EXTREMELY SENSITIVE
COMMERCIAL INFORMATION. REPRESENTATIVE OF PACCAR, INC.
(WASHINGTON ATTORNEY WILLIAM WICKENS) MET WITH DEPARTMENT
OFFICIALS ON SEPTEMBER 29 TO SEEK ASSISTANCE IN AVOIDING
LOSSES THE COMPANY IS FACING IN ITS MEXICAN OPERATION DUE
TO SEEMING ABROGATION BY GOM OF PARTS OF ITS MONETARY LAW
WHICH GUARANTEE REPAYMENT OF DOLLAR-DENOMINATED NOTES AT
THEIR FACE VALUE. CONGRESSIONAL INTEREST HAS ALSO BEEN
EXPRESSED IN THIS CASE. FACTS AS GIVEN US BY PACCAR
ARE PRESENTED BELOW. EMBASSY IS ASKED TO DETERMINE GOM
POLICY. END SUMMARY.

1. PACCAR OWNS 49 PERCENT OF MEXICAN AFFILIATE, KENWORTH
MEXICANA (KENMEX), LOCATED IN MEXICALI. WITH OVER 1,300
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EMPLOYEES, IT IS THE LARGEST TRUCK MANUFACTURER IN MEXICO

AND SUPPLIES OVER HALF OF THE MEXICAN MARKET FOR HEAVY TRUCKS. IT BUYS OVER 85 PERCENT OF ITS COMPONENTS FROM MEXICAN SUPPLIERS AND HAS ENJOYED EXCELLENT EMPLOYEE AND GOVERNMENT RELATIONS.

2. AS ALLOWED BY THE MEXICAN MONETARY LAW, KENMEX CONDUCTS ITS SALES ON A DOLLAR BASIS; ITS PRICE BOOK, ITS ORDERS AND ITS INVOICES ARE ALL IN DOLLARS. KENMEX PROVIDES FINANCING FOR MOST OF ITS TRUCK SALES. IN SUCH CASES, KENMEX RETAINS TITLE TO THE TRUCK AND TAKES FROM THE PURCHASER A SERIES OF DOLLAR-DENOMINATED NOTES, ONE FOR EACH OF THE MONTHLY PAYMENTS. KENMEX ASSIGNS THESE NOTES TO PACCAR WHICH USES THEM AS COLLATERAL FOR A LINE OF CREDIT PROVIDED BY A GROUP OF AMERICAN BANKS, WHICH CURRENTLY HOLD ABOUT DOLS. 60 MILLION OF THESE NOTES.

3. PACCAR'S COMPLAINT RELATES NOT TO PESO AND PESO-OBLIGATION LOSSES SUFFERED BY DEPRECIATION OF THE PESO, BUT TO THE SUBSTANTIAL LOSS IT FACES IF THESE DOLS. 60 MILLION IN NOTES ARE NOT REDEEMED AT THEIR FACE VALUE. THE COMPANY BELIEVES THAT ARTICLE 8 OF THE MONETARY LAW APPLIES TO THESE NOTES. THIS ARTICLE PROVIDES THAT FOREIGN CURRENCY OBLIGATIONS WHICH ARE INCURRED IN MEXICO CAN BE FULFILLED BY PAYMENT OF THE EQUIVALENT AMOUNT IN PESOS AT THE RATE OF EXCHANGE PREVAILING AT THE TIME AND PLACE OF PAYMENT. AN EXCEPTION ALLOWED IN ARTICLE 9 WOULD NOT APPLY BECAUSE THE DEBTOR WOULD HAVE NO BASIS TO CLAIM THAT THE OBLIGATION WAS ORIGINALLY INCURRED IN MEXICAN CURRENCY.

4. PACCAR'S PROBLEM STEMS FROM A POSSIBLE CONFLICT BETWEEN THE MONETARY LAW AND MEXICO'S CONSUMER PROTECTION LAW, A PRICE CONTROL LAW. ACCORDING TO PACCAR REP, MEXICAN AUTHORITIES HAVE APPARENTLY CONSTRUED THE LATTER LEGISLATION TO PROHIBIT PAYMENT OF DOLLAR OBLIGATIONS AT THEIR FACE VALUE BECAUSE THE CURRENT PESO EQUIVALENT WOULD EXCEED THE PRICE CONTROL CEILING IN EFFECT WHEN THE TRUCKS WERE SOLD. SECRETARY OF COMMERCE AND INDUSTRY CAMPILLO SAINZ REPORTEDLY EXPRESSED THIS POSITION IN A TELEVISION SPEECH ON SEPTEMBER 9. THIS SPEECH AND CONFIDENTIAL

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SUBSEQUENT DISCUSSIONS AT THE MINISTRY BY PACCAR'S MEXICAN LAWYERS ARE THE BASIS OF PACCAR'S CONCERN.

5. THE MINISTRY'S POSITION, WHICH APPEARS TO CONFLICT WITH ARTICLE 8 OF THE MONETARY LAW, WOULD INFLICT A POSSIBLE DOLS. 24 MILLION LOSS ON PACCAR. FURTHER, APPLICATION OF CURRENT PRICE CONTROL CEILINGS MAKES IT IMPOSSIBLE FOR KENMEX TO SELL 100 TRUCKS IN STOCK OR

OTHER NEW TRUCKS EXCEPT AT A LOSS. THE COMPANY CANNOT KEEP ITS PLANT IN OPERATION UNDER THESE CONDITIONS AND HAS SUSPENDED PRODUCTION PENDING A SATISFACTORY RESOLUTION OF THIS PROBLEM. ITS EMPLOYEES, ITS SUPPLIERS, ITS DEALER NETWORK, AND ITS CUSTOMERS WILL BE SEVERELY

HURT UNLESS THIS PROBLEM CAN BE RESOLVED.

6. ACTION REQUESTED: PLEASE VERIFY PERTINENT FACTS IN THIS CASE, PARTICULARLY GOM POLICY FOR RESOLVING THE APPARENT CONFLICT BETWEEN TWO LAWS. IF PRICE CONTROL LAW RATHER THAN MONETARY LAW IS TO TAKE PRECEDENCE, AT EMBASSY'S DISCRETION, YOU SHOULD DISCUSS THESE PROBLEMS WITH GOM OFFICIALS TO DETERMINE WHAT STEPS PACCAR OR KENMEX (AND OTHER COMPANIES IN SIMILAR CIRCUMSTANCES) CAN TAKE TO AVOID A LARGE LOSS ON DOLLAR OBLIGATIONS OF MEXICAN CUSTOMERS. ROBINSON

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